

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WALDEN,

Petitioner,

-against-

JULIE WOLCOTT, ORLEANS
CORRECTIONAL FACILITY,

Respondent.

20-CV-8841 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

On December 12, 2019, Petitioner John Walden, currently incarcerated in Orleans Correctional Facility in Albion, New York, filed a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254, challenging his December 1, 2017 New York County judgment of conviction. *See Walden v. Wolcott*, ECF 1:19-CV-11409, 2 (S.D.N.Y. filed Dec. 12, 2019) (“*Walden I*”). That petition is currently pending before Magistrate Judge Sarah Netburn. By order dated August 21, 2020, Magistrate Judge Netburn denied Petitioner’s (1) motion to strike Respondent’s notice of appearance; (2) requests for a “mandatory conference” with the Court; and (3) requests to make various amendments to the docket sheet. (*Walden I*, ECF No. 43.)

On September 3, 2020, Petitioner filed this petition, which he styles as a petition for a writ of *habeas corpus* under 28 U.S.C. § 2241, in the United States District Court for the Western District of New York. *See Walden v. Wolcott*, ECF 1:20-CV-8841, 1 (S.D.N.Y. filed Sept. 3, 2020).¹ By order dated October 2, 2020, Western District Chief Judge Frank P. Geraci, Jr. transferred the petition, under 28 U.S.C. § 1406(a), to this Court, holding that the petition is in

¹ The case in the Western District was *Walden v. Wolcott*, No. 6:20-CV-6679 (W.D.N.Y. filed Sept. 3, 2020).

fact a challenge to Petitioner's underlying conviction and to a decision in *Walden I*, and that all the records relating to Petitioner's conviction and his 2254 proceeding are located in the Southern District. (*Walden II*, ECF No. 5.) On October 14, 2020, Petitioner filed a motion in the Western District for reconsideration of the transfer order, arguing that he is not challenging his underlying conviction, but is rather "[a]ttack[ing] ... the [e]xtraordinary [c]ircumstances" of his 2254 action pending in the Southern District. (*Walden II*, ECF No. 6, at 1.) On October 21, 2020, Chief Judge Geraci denied Petitioner's motion for reconsideration, again noting that Petitioner appears to argue that his 2254 petition in the Southern District was wrongly decided, and that all the relevant records are located in the Southern District. (*Walden II*, ECF No. 7.)

On October 22, 2020, upon receiving this action from the Western District, the Clerk of Court opened the petition as a new action seeking a writ of *habeas corpus* under 28 U.S.C. § 2241, and assigned it a new case number. The Court has reviewed the petition and concludes that it should not have been opened as a new action. The petition is best construed as a motion for reconsideration of Magistrate Judge Netburn's August 21, 2020 order in Petitioner's open § 2254 action. The Court therefore directs the Clerk of Court to docket the petition in this action (ECF No. 1) as a motion for reconsideration of Magistrate Judge Netburn's August 21, 2020 order (ECF No. 43) in *Walden I*, No. 19-CV-11409, and to administratively close this action, *Walden II*, No. 20-CV-8841.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

The Clerk of Court is further directed to docket the petition in this action (ECF No. 1) as a motion for reconsideration of Magistrate Judge Netburn's August 21, 2020 order (ECF No. 43)

in *Walden I*, No. 19-CV-11409. The Clerk of Court is also directed to docket a copy of this order in *Walden I*, No. 19-CV-11409.

The Clerk of Court is also directed to administratively close this action, No. 20-CV-8841.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: November 9, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge